

In the Matter of Merchant Mariner's Document No. Z-650140-D1 and
all other Seaman Documents
Issued to: DEAN A. KISSLER

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1383

DEAN A. KISSLER

The appeal has been taken in accordance with Title 46 United State Code 239b and Title 46 Code of Federal Regulations 137.30-1.

By order dated 15 August 1962, an Examiner of the United States Coast Guard at Honolulu, Hawaii revoked Appellant's seaman documents upon finding him guilty of the charge of "conviction for a narcotic drug law violation." The specifications found proved alleges that, on 5 July 1962, Appellant was convicted by the United States District Court for the District of Hawaii, a court of record, for a violation of 18 U. S. Code 1407, a narcotic drug law of the United States (failure to comply with the narcotics registration requirements upon entering the United states).

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence a certified copy of a Judgment and Commitment showing that Appellant was convicted as alleged while represented by counsel before the court. Appellant was sentenced to pay a fine of \$350.

In defense, Appellant testified concerning his background. Appellant stated that he has a wife and two children in Japan; he tried to register his 1949 conviction (for possession of marijuana) with the Customs authorities before leaving the continental United States as a crew member on the SS LA SALLE; in 1954 and again after his release from prison in Honolulu, Appellant assisted narcotics or Customs officers; he has been going to sea since 1945.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that 18 U. S. Code 1407 is not a basic narcotic law but a procedural law control attempts to smuggle narcotics into the United States. The purpose of 46 U. S. Code 239b is not to revoke the documents of a seaman for violation of a

procedural law but to take action against the documents of seamen who have been convicted for possession, use, or sale of narcotics.

The Coast Guard abused its discretion by proceeding under 46 U. S. Code 239b to revoke Appellant's document. He not only has had a good record since the 1949 conviction but has twice cooperated with the authorities in narcotic matters.

It is Appellant's position that the Coast Guard should have proceeded under 46 U. S. Code 239(g). Therefore, it is respectfully submitted that the order of the Examiner should be reversed.

APPEARANCE: John E. Ahrens, Esquire, of Honolulu, of Counsel.

OPINION

The contention that 18 U. S. Code 1407 is not a narcotic law within the meaning of 46 U. S. Code 239b is disposed of on the authority of United States v. Bologna (D.Ct., S.D. Calif., 1960), 181 F.Supp. 706. aff. 287 F.2d 559 (C.A. 9, 1960), where it was held that a conviction for failure to register under 18 U.S.C. 1407 is an offense which requires subsequent registration under 18 U.S.C. 1407. The latter statute requires registration by any person entering or leaving the United States "who has been convicted of a violation of any of the narcotic or marihuana laws * * *." Title 46 U.S.C. 239b may be applied in cases where there has been a conviction for "a violation of the narcotic drug laws * * *." In United States v. Bologna, supra, the Court of Appeals affirmed on the sole basis of a determination that 18 U.S.C. 1407 "is a narcotic law of the United States." In view of the similarity in the wording of the two statutes, it is my opinion that a conviction under 18 U.S.C. 1407 is a "narcotic drug law" conviction (which includes marijuana by definition in 46 U.S.C. 239a) for the purpose of 46 U.S.C. 239b since it is a "narcotic law" conviction under 18 U.S.C. 1407. This conclusion also follows for the reason stated in Commandant's Appeal Decision No. 1098 that the failure to register under 18 U.S.C. 1407 tends to defeat the purpose of this statute to assist in controlling the traffic in narcotic drugs by surveillance of the activities of those known to have been involved with narcotics at some time in the past.

With respect to the other point raised on appeal, I am not satisfied that the record indicates there was an abuse of discretion for proceeding under 46 U.S.C. 239b instead of 46 U.S.C. 239(g). Action under the latter statute would not necessarily have resulted in an order of revocation. Concerning Appellant's testimony about his background, there is no corroborating evidence to support his bare statements that the other two incidents involving narcotics, in addition to his conviction in 1949, were

situations where his so-called narcotic "buys" were negotiated while he was assisting the narcotics or Customs authorities. Even if this is true, it shows Appellant's association, to some extent, with persons trafficking in narcotics. Also, Appellant's prior record of several offenses while serving on various ships is indicative of a generally poor background as a merchant seaman.

It is my conclusion that the action taken to revoke Appellant's document was not arbitrary or capricious and, therefore, there was no abuse of the discretion granted by the statute. United States ex rel. Hintopoulos v. Shaughnessy (1957), 353, U. S. 72, 77.

ORDER

The order of the Examiner dated at Honolulu, Hawaii, on 15 August 1962 is AFFIRMED.

E. J. Roland
Admiral, United States Coast Guard
Commandant

Signed at Washington, D. C., this 16th day of April 1963.